

**NC COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES, AND
SUBSTANCE ABUSE SERVICES**

Holiday Inn-North
2805 Highwoods Blvd., Raleigh, NC 27604

Thursday, November 16, 2006

Attending:

Commission Members: Lois T. Batton, Laura C. Coker, Clayton Cone, Dorothy Rose Crawford, Mazie T. Fleetwood, Ann Forbes, Buren Harrelson, Ellen Holliman, Judy L. Lewis, Martha Martinat, Floyd McCullouch, Connie Mele, Emily Moore, Jerry Ratley, Tom Ryba, Ellen Russell, Anna Marie Scheyett, Carl Shantzis, Ed.D., CSAPC, Fredrica T. Stell, Martha Macon

Commission Members Excused: Pender McElroy, Dr. Marvin Swartz, Dr. Richard Brunstetter, Dr. Paul Gulley, Dr. William Sims

Ex-Officio Committee Members: Deby Dihoff, Joe Donovan, Bob Hedrick, Dave Richard, Joe Donovan, Yvonne Copeland

DMH/DD/SAS Staff: Mike Moseley, Leza Wainwright, Steven Hairston, Denise Baker, Marta T. Hester, Cindy Kornegay, Flo Stein, Sonya Brown, John Womble, Jason Reynolds, Susan Robinson, Bonnie Morell, Andrea Borden

Others: Louise G. Fisher, Paula Cox, Sarah Partin, Claire Szaz, Martha Brock, John Crawford, Larry Pittman, Stephanie Alexander, Debbie Fike, Trish Heesey

Handouts:

- 1) Memorandum on the Training and Transaction Log Requirements for the Sale of Certain Pseudoephedrine Products in North Carolina
- 2) Presentation on *Adults with Mental Illness in Adult Care Homes*
- 3) Mental Illness Over-Represented in Jails & Prisons
- 4) MH/DD/SA Transformation Update Town Hall Meeting
- 5) Workforce Development Work Plan Subcommittee Membership List

Mailed Packet:

- 1) Draft August 17, 2006 Commission Meeting Minutes
- 2) Draft October 18, 2006 Advisory Committee Minutes
- 3) Draft October 19, 2006 Rules Committee Minutes
- 4) 2007 Proposed Commission Meeting Dates
- 5) Proposed Amendment of 10A NCAC 27 G.0404 Operations During Licensed Period
- 6) Proposed Amendment of 10A NCAC 26C .0100 Designation of Facilities for the Custody and Treatment of Involuntary Clients Rules
- 7) Proposed Repeal of 10A NCAC 29D .0600 Substance Abuse Assessments (DWI) Rules

- 8) Proposed Repeal of 10A NCAC 29D .0400 Therapeutic Home Rules
- 9) Controlled Substance Reporting System Temporary Rules 10A NCAC 26E .0600
- 10) DMH/DD/SAS Organization Chart
- 11) PDF Attachments from the October 18, 2006 Advisory Committee Meeting
 - NC Division of MH/DD/SAS Brochure entitled, “*Advocacy and Customer Service, People Working Together*”
 - Communication Bulletin #059 on Session Law 2006-142, House Bill 2077
 - Local CFAC Summary Report
 - State CFAC Membership List
 - State CFAC Representation as of October 5, 2006
 - Presentation entitled “*Implications for Local Consumer and Family Advisory – Committees*”
 - Presentation entitled “*Workforce Development Planning for Direct Support Professional*”
- 12) Presentation Entitled “*Quality Support: A Prospectus to Strengthen the Direct Support Professional Workforce in North Carolina*”

Call to Order

Emily Moore called the meeting to order at 9:42 a.m. Judy Lewis delivered the invocation.

Ms. Moore welcomed all attendees and asked the Commission members, Division staff, and other attendees to introduce themselves to the Commission.

Ms. Moore advised that Chairman Pender McElroy was absent due to a prescheduled meeting in Washington with the National Mental Health Association. She also stated that Dr. Marvin Swartz, Dr. Paul Gulley and Dr. Richard Brunstetter would be absent and that Anna Scheyett and Dr. William Sims would be arriving late. Ms. Moore added that the minutes should reflect that the absences of Dr. Swartz, Dr. Gulley, and Dr. Brunstetter are excused. Ms. Moore further stated that the Commission would be expecting a visit from Senator Janet Cowell from Wake County.

Approval of Minutes

Upon motion, second, and unanimous vote, the Commission approved the minutes of the August 17, 2006 Commission meeting as submitted.

DMH/DD/SAS Director’s Report

Michael Moseley, Director of DMH/DD/SAS, began his report by stating that the Division obtained final approval for its consultant to assist the fifteen (15) areas that have been identified as crisis regions with the requirement being to produce plans from each of these regions by March 2007. Mr. Moseley informed the Commission that there was also a legislative requirement to secure another consultant to work on a variety of issues within the Division and that the Request for Proposal (RFP) for that position is being reviewed.

He advised that the Cultural Competency Plan has been posted to the DMH/DD/SAS web site; the First Quarter Local Management Entity (LME) Performance Report was

finalized; and the expansion budget request for positions received some level of support through the North Carolina Department of Health and Human Services (DHHS).

Carl Shantzis asked if there were any highlights that Mr. Moseley wanted to share from the First Quarter LME Performance Report. Leza Wainwright, Deputy Director of the DMH/DD/SAS, responded that one of the measures that the Division examined was the percentage of the anticipated target population that each LME was serving by LME. She stated that they were only looking at consumers who receive state funding and Medicaid and that they could not capture data from the county or from private entities. They also examined some of the LME's actual performance of their management functions and reviewed each LME's current capacity to perform 24/7, 365, screening, triage and referral. Finally, the Division looked at the LME's management of state allocated dollars and at the percentage of dollars that they had spent in the first quarter of the year. The DMH/DD/SAS management team outlined areas that they want to measure in the future.

Ms. Coker requested an update on the Community Alternatives Program for Persons with Mental Retardation/Developmental Disabilities Waiver (CAP-MR/DD). Ms. Wainwright stated that they added 3,075 people to the Waiver as a result of the transition from developmental therapy and that the LME's have been allowed the potential to add up to 200 additional people to the Waiver. Ms. Wainwright added that the main topic of discussion, related to the Waiver, is a technical amendment done to clarify that legally responsible individuals may not be service providers for consumers. Previously, the Waiver allowed legally responsible individuals to provide services to family members only under extraordinary circumstances. The area that would be impacted involves family members who have served as paid service providers, who are also serving as guardians. There appears to be a conflict of interest when a guardian is allowed to conduct their own evaluation as a service provider. The Division has verbal approval from The Centers for Medicare and Medicaid Services, CMS; this change will be phased in gradually with the completion of the Continued Needs Review (CNR).

Floyd McCullouch asked if funding had a bearing on their decision. Ms. Wainwright responded that this was not done from a financial prospective. The concern was the inherent conflict of interest in having the family member also serve as the service provider; an additional concern was the excessive number of hours worked per week.

Ms. Coker asked about the identity of the consultant for the crisis project and if there would be input from consumers across the state. Ms. Wainwright responded that the consultant has not been selected yet and that each region is responsible for developing their own plan. There is also a requirement for consumer input and it will involve input from consumers in the region that is developing the plan.

Ms. Coker also inquired about the new positions that the Governor may approve. She questioned whether salary increases will be available and if this action had to be approved through the legislature. Mr. Moseley stated that the salary increase would require legislative approval and that the main focus of their request was on field based staff.

Mazie Fleetwood asked about the amount of state dollars going towards the administration and monitoring of services as opposed to the amount of state dollars that

are going directly to services for consumers. Ms. Wainwright responded that the cost of administration has gone up because the LME's have a lot of responsibilities that the old area authorities did not have to perform. However, the LME's payments have gone down and under the new cost model that the Division is in the process of finalizing, this decrease is expected to continue.

Ms. Fleetwood questioned if the Division knew the scope of what the State Auditor's Office investigated beyond Henderson County and Pasquotank County. Mr. Moseley stated that the initial focus will be on two issues: 1) The demise of New Vistas; and 2) The salary of Charlie Franklin, the Chief Executive Officer of the Albemarle LME.

Ms. Moore asked Mr. Moseley about an earlier statement made regarding unused drug and alcohol money. Ms. Wainwright addressed the challenges involved in the delivery of substance abuse services. She advised that suggestions from the Commission regarding this issue are welcome.

Questions from Commission members were asked regarding developing programs with the corrections system for inmates identified as substance abusers. Ms. Wainwright responded that they do have a strong collaborative effort with the NC Department of Juvenile Justice and Delinquency Prevention (DJJDP) and the NC Department of Corrections (DOC). Ms. Wainwright stated that there is a three-way Memorandum of Agreement between the Division, DOC and the Administrative Office of the Courts. She also mentioned that there is the Treatment Alternatives for Safer Communities Program (TASC) that works with adult offenders with substance abuse problems. TASC works to help individuals with abuse problems not to go into jail first, but if they do go to jail there is a way to ensure they move into treatment when they are paroled.

Questions were also asked about LME's not having enough providers to provide services and the source of funds for this. Mr. Moseley advised that LME's need to continue to speak with their local legislators about their funding needs. He also stated that the Division was engaged in a long range study that they will be reporting on in December which examines relevant funding issues.

Rule Committee's Report

Floyd McCullough, Rules Committee Chairman, presented the Rules Committee's report on the October 19, 2006 meeting. Mr. McCullough's report is attached.

Advisory Committee's Report

Commission member, Carl Shantzis, delivered the Advisory Committee Report on behalf of Dr. Marvin Swartz, the Chairman of the Advisory Committee. Dr. Shantzis reported that the Advisory Committee met on October 18, 2006 and began their work on workforce development. The workforce development project is expected to be completed by October 2007, with the final report finalized by November 2007. Dr. Shantzis explained that the Advisory Committee was divided into four subcommittees consisting of Commission members, Ex-Officio members, and Division staff and that the minutes from each group are included in the Commission packets.

Dr. Shantzis provided an overview of the afternoon agenda at the Advisory Committee which began with Chris Phillips, Chief, DMH/DD/SAS Advocacy and Customer Service

Section, providing an update on Consumer and Family Advisory Committees (CFACs). Ann Remington, the DMH/DD/SAS Consumer Empowerment Team Leader, conducted a presentation on Session Law 2006-142 House Bill 2077, *"Implications for Local Consumer and Family Advisory Committees"*. There was also a presentation given by Dr. Amy Hewitt, Training and Project Director, University of Minnesota Research and Training Center of Community Living. Dr. Hewitt received a grant from the NC Council on Developmental Disabilities and the NC Council on Community Programs to look at developing workforce issues in the state of North Carolina. Her presentation was on *"Workforce Development Planning for Direct Support Professionals"*. Dr. Shantzis added that Dr. Hewitt could be available to our workforce development project to assist the Advisory Committee if needed and that the meeting adjourned at 3:45 p.m.

2007 Proposed Meeting Schedule

Dorothy Crawford asked if a correction could be made to the packet on page 31 within the Advisory Committee minutes to change the word *"misused"* to *"unused"*.

Ms. Moore opened the discussion on the next agenda item which was the 2007 Proposed Meeting Schedule. She informed the Commission of a request made by Commission member Anna Scheyett, to change the Commission meeting to the first or last Thursday of the month due to a scheduling conflict involving her staff meetings at the University of North Carolina. Steven Hairston, Section Chief of DMH/DD/SAS Operations Support Section, further clarified this issue regarding Ms. Scheyett's schedule by stating that she has a conflict with all 2007 Commission dates because she has faculty meetings on those dates, and some conflict with the 2007 Rules Committee dates, as well.

After discussion among the Commission, the motion was made to ask the Chairman to work with the Division staff and other Commission members to give alternative dates if possible.

Upon motion, second, and unanimous vote, the Commission approved the motion to have the Commission Chairman work with DMH/DD/SAS staff, and other Commission members to generate alternative dates for the Commission meetings.

Presentation on "Adult Care Home Issues re: Adults with Mental Illness"

Bonnie Morell, Best Practice Team Leader from the DMH/DD/SAS, provided a presentation on *"Adults with Mental Illness in Adult Care Homes"* (see attachment). Clayton Cone asked if it had to be a residential program versus wrap around services or an intervention. Ms. Morell stated that they needed residential services; for some people, a secure structured treatment environment is needed.

A Commission member asked if this is a rehabilitation program that will have a shorter length of stay or will it be some place for someone to go and live for a long period of time. Ms. Morell responded that the stay would be for four to six months; the hope is that this would be a transitional service. Ms. Morrell added that the focus will be upon Mental Health issues with the recognition that there are similar issues related to Developmental Disabilities and Substance Abuse Services consumers.

Mr. Cone asked about the adult care home cost for a day. Ms. Morell stated that the rate is \$1,300 per month and that although cost estimates on the new definition is not currently available, it will be more expensive.

Laura Coker asked if the screening tool examined adult care facilities and not just nursing homes. Ms. Morell advised that it would be a similar approach as used in nursing homes, except it will be more appropriate for people who come into adult care homes. Ms. Coker recommended that Ms. Morell include consumers and people from the communities in her efforts; Ms. Coker referred to these individuals as “system thinkers”.

Commission member Lois Batton stressed the importance of clinical case management. She further stated that she felt one of the problems in residential care has been the mixture of non-ambulatory people who are elderly, with very physically hyperactive or violent patients.

Within Ms. Morell’s presentation, she discussed the recommendations made by a DHHS study group which convened based upon the requirements outlined in House Bill 1414, Section 10.2 (Session Law 2004-124). The Commission endorsed the recommendations made by this study group which is outlined below:

1. Expansion of mental health specialty teams to provide training, technical assistance and linkage to local mental health services for long term care facilities.
2. Design and Implementation of an automated screening, assessment and care planning system to be used prior to admission to long term care services.
3. Conduct a study to inform the development of a continuum of residential services to meet the varied needs of persons with mental illnesses.
4. Develop a “Transitional Residential Treatment Program.”

Ellen Russell stated her endorsement and applaud of this effort but cautioned that all disability groups should be considered.

Upon motion, second, and unanimous vote, the Commission moved to support this effort and to attach a copy of the Housing Report developed by the Advisory Committee of the Commission, along with their full endorsement to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and to the Study Commission on Aging.

The group adjourned for lunch at 12:00 p.m. and the meeting resumed at 1:05 p.m.

Proposed Amendment of 10A NCAC 27G .0404 Operations During Licensed Period

Stephanie Alexander, Division of Facility Services, Mental Health Licensure, presented the proposed amendment for this rule. Ms. Alexander informed the Commission that the majority of the changes proposed were based on Session Law 2005-276, and that some of the changes were made to update the rule so that it more accurately reflects what is really required. Ms. Alexander presented the rule to the Commission for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Proposed Amendment of 10A NCAC 26C .0100 Designation of Facilities for the Custody and Treatment of Involuntary Client Rules

Flo Stein, DMH/DD/SAS Section Chief of Community Policy Management, presented the proposed amendment for this rule on behalf of Bert Bennett. Ms. Stein began by stating that this was an update and clean up of an existing rule. She further advised the Commission that the rule was presented for information only, since the Secretary of the NC Department of Health and Human Services has rulemaking authority for this issue.

Proposed Repeal of 10A NCAC 29D .0600 Substance Abuse Assessment (DWI) Rules

Jason Reynolds, DHM/DD/SAS Justice Systems Innovation-DWI, presented the proposed repeal of this rule. Mr. Reynolds stated the proposed repeal is to update the rules to reflect current practice, since the rules proposed for appeal are outdated and redundant.

Upon motion, second and unanimous vote, the Commission approved the repeal and publication of this rule.

Proposed Repeal of 10A NCAC 29D .0400 Therapeutic Home Rules

Susan Robinson, DMH/DD/SAS Early Intervention and Prevention, presented the proposed repeal of this rule. The providers were required to meet requirements in several different rules. However, now the requirement has been aligned and condensed. These rules currently exist and programs and providers are able to operate services under GS 131D in the Social Services rule.

Upon motion, second and unanimous vote, the Commission approved the repeal and publication of this rule.

Update to Training and Transaction Log Requirements for the Sale of Certain Pseudoephedrine Products in NC

Sonya Brown, Team Leader, DMH/DD/SAS Justice Systems Innovation-Drug Regulatory, discussed a memorandum she gave to the Commission which was addressed to the NC Pharmacy Permit Holders on the “*Training and Transaction Log Requirements for the Sale of Certain Pseudoephedrine Products in North Carolina*”. Ms. Brown advised the Commission that the memorandum was a revision of the original document approved last year. It includes amendments to the legislation that the General Assembly passed this year. The referenced memorandum highlighting those actual changes is attached.

Upon motion, second and unanimous vote, the Commission ratified the memorandum.

Training Program for Employees of Retail Establishments(Pseudoephedrine Products)

Ms. Brown discussed the training program targeted for employees of any establishment selling pseudoephedrine products. These products which include liquid, liquid capsules, gel capsules and pediatric products, are not required to be stored or sold from behind a pharmacy counter. The Commission is required to approve and develop a training program that would be targeted for those types of employees. The Attorney General’s office has been working on developing that training program by trying to integrate the Federal Combat Methamphetamine Act with the NC Methamphetamine Lab Prevention Act, so that they could offer a single training. However, that was found to be too complex.

Ms. Brown stated that the finalized format of the training program is outlined as follows: 1.) Methamphetamine factual information such as the associated problems and what retailers selling pseudoephedrine products should know; and 2.) State law requirements regarding methamphetamine and pseudoephedrine products here in North Carolina. Ms. Brown further advised that the training will conclude with a summary of the federal law and direct retailers to the U.S. Drug Enforcement Administration's (DEA) web site, because they have a training posted on the web site, along with Frequently Asked Questions about the Federal Combat Methamphetamine Act. Ms. Brown told the Commission that the finalized training program will be available at the next Commission meeting.

Controlled Substance Reporting System Temporary Rules 10A NCAC 26E .0600

John Womble, DMH/DD/SAS Justice Systems Innovation, presented the *Controlled Substance Reporting System Temporary Rules* to the Commission. Mr. Womble stated that on August 17, 2006, the Commission adopted the controlled substance reporting systems requirement and these rules were filed with the Rules Review Commission and were approved by them on September 21st. However, the Commission should note that written objections concerning these rules were received from ten (10) individuals and the rules are now subject to legislative review. The Division is now requesting that these rules be adopted as temporary rules as allowed by G.S. 150B-21.3(b2).

Commission Member Mazie Fleetwood asked about the basis of the objection. Mr. Womble stated that the objection for all ten letters dealt with the fiscal impact of implementing the rules. The letters came from an individual pharmacy, Eckerd's Drugs, The Retail Merchants Association, Ingalls, CVS, Food Lion and Bi-Lo Pharmacy.

The Commission asked about the process for undertaking temporary rules, which was explained by Cindy Kornegay, the Rulemaking Coordinator from the DMH/DD/SAS.

Upon motion, second and unanimous vote, the Commission adopted the temporary rules.

Public Comment Period

Larry Pittman, President, Addiction Professionals of North Carolina (APNC), opened with a poem that was relevant to the comments that he would be making. Mr. Pittman stated that APNC has a diverse membership with many of its 350 members being counselors and practitioners offering direct services. He said that they appreciate the hard work the Commission has done in participating in the process of reform in North Carolina and that it is the belief of APNC that the Commission has serious concerns about what is currently happening in some areas across the state. Mr. Pittman advised that APNC want to be part of the solution to some of these concerns. Mr. Pittman believes that they can offer suggestions derived from direct providers, who are doing the hands on work because providing face to face services allows them to experience first hand the direct results, both positive and negative, of reform. For example, many substance abuse providers have experienced some services being severely curtailed and report in some cases non-existence. In some areas, but not all, they have seen a lack of adequate funding and or a shortage of qualified providers. Some of the members have attempted to provide services and have had to cease those efforts because of barriers within the current system.

He further stated that there is some inconsistency and some cumbersomeness among LMEs in the mandated documentation and paperwork that is required. As well, he mentioned that there are also problems in the processing of authorization, reauthorization and payment in a timely manner. Mr. Pittman further added that he understood that the Commission was looking at workforce issues and that APNC want to be a part of this initiative.

Laura Coker, a Commission member, asked if there is an issue of getting funds from the LME to the providers. Ms. Coker also asked if authorization is an issue or if there is a cash flow problem.

Mr. Pittman responded that he is employed by Southeastern Medical Center in Lumberton and that they have experienced some problems getting paid. He believes there may be some confusion surrounding the LME's getting funding to the providers.

Dr. Shantzis suggested that the Commission invite Mr. Pittman back to participate on the Advisory Committee's Workforce Development Project.

Flo Stein from DMH/DD/SAS, commented that she is pleased that Mr. Pittman's group, APNC, is coming to the Commission meetings. She further added that substance abuse services should be receiving grant funding and that the Joint Legislative Study Commission on MH/DD/SAS is looking into it.

Martha Macon commented that the LME Human Rights Committee is having problems trying to find people to represent that particular population on the committee.

There being no further business the Commission meeting adjourned at 2:05 p.m.

**Mr. McCullouch's Report on the
Summary of the Rules Committee Meeting on
October 19, 2006**

The Committee heard presentations on the following:

- ❖ Proposed Repeal of Substance Abuse Assessments (DWI) Rules (10A NCAC 29D .0600)
- ❖ Proposed Amendment of Designation of Facilities for Custody and Treatment of Involuntary Clients (10A NCAC 26C .0100)
- ❖ Proposed Repeal of Therapeutic Home Rules (10A NCAC 29D .0400)

And

- ❖ Proposed Amendment of Operations During Licensed Period (10A NCAC 27G .0404)

Commission members will hear presentations on these proposed rules at today's meeting.

The proposed amendments of Operations During Licensed Period and Designation of Facilities for Custody and Treatment of Involuntary Clients are Secretary rules and are presented for information and comment.

The proposed repeals of Therapeutic Home and Substance Abuse Assessments (DWI) rules are Commission rules. The Rules Committee approved the proposed repeals to be forwarded to the full Commission with a favorable recommendation for publication.

The Rules Committee also heard presentations on:

- ❖ The Proposed Service Definition for Therapeutic Foster Care Services

The DMH/DD/SAS, the Division of Social Services and the Division of Medical Assistance collaborated on the development of this new service definition. The draft service definition has been posted on the DMA website for the required comment period and must be approved by the Centers for Medicaid and Medicare before it can become effective.

- ❖ Collaborative Initiatives Between DHHS, DPI and DMH/DD/SAS

A handout summarizing the initiatives is included in the Commission packet behind the draft Rules Committee minutes.

❖ Training Programs for Employees of Retail Establishments (Pseudoephedrine Products)

The Rules Committee heard a brief presentation on the status of the development of a training program to meet the statutory requirements of G.S. 90, Article 5D, Control of Methamphetamine Precursors. The Commission will hear additional information in today's meeting.

There was discussion of the Commission's rulemaking authority related to LMEs and CFACs. This included discussion of the new statutory language included in Session Law 2006-142 (HB 2077). The legislation requires each CFAC to prepare its own bylaws which are to specify how members are selected. Each CFAC is to be self-governing and self-directed. The Rules Committee agreed that no rule action was needed at the present time but recommended that the Commission continue to monitor the issue of LME interference with the operations of local CFACs.

There was also discussion related to individuals with mental illness and developmental disabilities residing in adult care homes. There is a legislative subcommittee that has been appointed and the Secretary of DHHS is making a number of recommendations. The Commission will hear a report concerning adult care home issues and adults with mental illness at today's meeting.